

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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CAROLETTE DANINE MEADOWS,

Plaintiff,

v.

KRISTINA LESH and  
TAPESTRY CHARTER SCHOOL,

Defendants

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**DECISION AND ORDER**

10-CV-00223(M)

In accordance with 28 U.S.C. §636(c), the parties have consented to jurisdiction by a United States Magistrate Judge [10].<sup>1</sup> Before me is plaintiff's motion for a "default order" appointing a mediator [24]. For the following reasons, plaintiff's motion is denied.

**BACKGROUND**

Plaintiff commenced this action *pro se* alleging a violation of her right to free exercise of religion arising from defendants' alleged failure to abide by her request to permit her daughter to fast as part of a religious practice. Amended Complaint [13]. The current Case Management Order required the parties to confer and select a mediator by December 31, 2010. [18], ¶4. This did not occur.

**ANALYSIS**

Alleging that she "made attempt[ ] to negotiate for a mediator with the opposing counsel without results", plaintiff moved on January 3, 2011 for "a default order appointing

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<sup>1</sup>

Bracketed references are to the CM/ECF docket entries.

either Lindy Korn or Paul Pearson to this matter.” Plaintiff’s Motion [24]. In support of her claim that defendants had been unresponsive to her attempts to confer on the selection of a mediator, plaintiff’s motion attaches three e-mails dated December 17, 2010 between plaintiff and defendants’ counsel, Sheri Mooney, Esq. Plaintiff’s initial e-mail requested defendants’ mediator selections. In response, Ms. Mooney stated “I will forward . . . a letter to you . . . with the names of the mediators that I would suggest for you”. Id.

That same day, Ms. Mooney sent plaintiff a letter listing three proposed mediators. Mooney Affidavit [26], Ex. A. After receiving no response from plaintiff, Ms. Mooney sent a follow-up e-mail on December 28, 2010 asking plaintiff for her mediator selections. Id., Ex. B. It was not until after plaintiff filed her motion that she e-mailed Ms. Mooney on January 4, 2011, stating that she had “just arrived back in buffalo from vacation” and had not received Ms. Mooney’s mail or e-mails. Id. In response, Ms. Mooney forwarded plaintiff her prior correspondence and asked her to withdraw the motion, but plaintiff refused to do so. Id. Under these circumstances, I find no basis to appoint one of plaintiff’s suggested mediators by default.

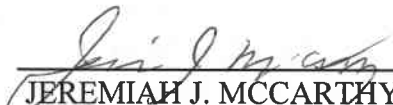
### CONCLUSION

For these reasons, plaintiff’s motion [24] is denied. The parties are directed to continue their discussions *in good faith* toward selection of a mediator, and to file the stipulation designating their selection of a mediator by February 28, 2011, failing which I will appoint a mediator in accordance with §5.4(C)(2) of this court’s Alternative Dispute Resolution Plan. The

deadline for the initial mediation session is extended to March 28, 2011. Case Management Order [18], ¶6. All other deadlines of the Case Management Order [18] shall remain in effect.

**SO ORDERED.**

DATED: February 15, 2011

  
JEREMIAH J. MCCARTHY  
United States Magistrate Judge